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**Notice of Allowability**

Application No.

10/817,019

Examiner

Allana Lewin

Applicant(s)

HOWELL ET AL.

Art Unit

3764

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to claims filed 4/1/2004; claims faxed 12-21-05
2. ☒ The allowed claim(s) is/are 1-42.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>7/12/04 &amp; 2/3/05</u> . | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material   | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-3, 14-17, 28-31, and 34-36 are directed to an allowable apparatus and related method. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 4-13, 18-27, 32, 33, and 37-42 are directed to an alternate species of the patentable apparatus, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claims 4-13, 18-27, 32, 33, and 37-42 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in the Office action mailed on September 13<sup>th</sup>, 2005 is hereby withdrawn.

### **EXAMINER'S AMENDMENT**

2. The application has been amended as follows due to a minor typographical error present in the specification regarding a reference numeral:

- On page 11, line 10, after the word 'surface' remove '12d' and replace with --14c--.

### ***Allowable Subject Matter***

3. Claims 1-42 are allowed. The following is an examiner's statement of reasons for allowance:

Ferguson (US Pat. No. 6,149,554), Böck (US Pat. 6,719,671), Shifferaw (US Pat. No. 4,620,704) and Dalebout et al. (US Pat. Pub. 2003/0232707) all disclose exercising devices wherein the resistance produced during exercise is provided by cantilevered or leaf spring members. Furthermore, these references teach rigid members that are movable with respect to these spring members and that engage the deflection end of the springs.

However, the prior art fails to teach or provide motivation for a resistance module that provides a substantially constant force through a range of motion, as recited in Applicant's preamble and is supported by the specification of the disclosure. This carries significant patentable weight due to the structure recited in the claim wherein the rigid member causes the cantilever spring to deflect thereby producing a resistance force, and furthermore the rigid member constrains the deflection end of the spring to a predetermined path.

The apparatus claims have been amended to incorporate an active element that is engageable by a user and connected to the resistance module as disclosed and supported by the specification, thereby containing the scope of the claims within the field of exercise devices and not readable upon devices such as friction clutches used in motor vehicles which employ leaf springs as a means of maintaining a constant force during operation.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL  
12/22/2005



STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332